In the High Court of Judicature for Rajasthan
At
Jaipur Bench, Jaipur

J U D G M E N T

In

S.B. Civil Misc. Appeal No.18/1992
Ajmer Sahakari Upbhokta Wholesale Bhandar Ltd.
Vs.
Regional Director, Karamchari Rajya Bima Nigam
& others

Date Of Judgment :: 22nd March, 2005

P R E S E N T
Hon'ble Mr. Justice J.R. Goyal

Mr. Anurag Agarwal for the appellant,
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None appeared for the respondents. Heard learned counsel for the appellant and perused the judgment and material available on the record.

2. Instant appeal has been preferred against the order dated 30/5/1991 passed by the court of Employees State Insurance and Civil Judge, Ajmer in case No.3/1987 by which the appeal of the appellant was dismissed.

3. The short question in this appeal is whether without giving any opportunity to the

appellant contributory amount can be fixed and notice for recovery of amount can be issued ? For determining this question relevant provisions of Section 45A of the Employees' State Insurance Act, 1948 are relevant which read as under :-

45A. Determination of contributions in certain cases.

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Inspector or other official of the Corporation referred to in sub-section (2) of section 45 is [1][prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or

establishment :

[2][PROVIDED that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.]

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B [3][or the recovery under section 45C to section 45-I]].

4. Proviso of the above Section makes it clear that no order shall be passed against Corporation unless principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard. In the instant case from the judgment of the lower court it is clear that no opportunity was given by the

respondent No.1 Regional Director, Karmachari Rajya Bima Nigam before finalizing the recovery amount on the head of contribution. Thus, the appeal is allowed and the case is remanded back to the Regional Director, Karmachari Rajya Bima Nigam with a direction that after giving reasonable opportunity the matter may be decided afresh. The appellant is also directed to appear before the Regional Director, Karmachari Rajya Bima Nigam on 12/4/2005. Record be sent back within ten days.

(J.R. Goyal),J

Vijay/-